

March 26, 2008

To: BIS-2008-0005-0001
From: Bill Root
Subject: Crime Control License Requirements
Ref: 73 FR 14769, 14770, March 19, 2008

Adding or Removing Items

The words “crime control” are inconsistent with the stated purpose of the controls, which is “to promote human rights.”

The human rights purpose is clearly furthered by the “implements of torture” ECCN 0A983 and 15 CFR 742.7(a)(5), which was surprisingly omitted from the “Background” in the referenced Notice. Omission of (a)(5) makes the following statement in that Background incorrect:

The specific entries on the CCL that describe items to which crime control license requirements apply are set forth in 15 CFR 742.7(a)(1) through (4).

Removal of controls from the following crime control items would promote human rights, whereas retention of these controls has the opposite effect:

0A979 police helmets and shields

(Helmets and shields make possible avoidance of lethal means to control crowds);

1A985 fingerprinting powders, dyes, and inks; 3A980, 3A981, 3D980, and 3E980 voice print identification, fingerprint analyzers, and related software and technology; 4A003,

4A980. 4D001, 4D980., 4E001, and 4E980 computerized fingerprint equipment;

6A002(c), 6E001, and 6E002 police model infra-red viewers and related technology;

9A980 mobile crime science laboratories; and proposed new item for biometric devices

(These items, which improve means of identifying people, make inadvertent action against the innocent less likely).

The proposed “integrated security systems” item is too imprecise to be understood for export control purposes. For other purposes, 7D102, 9D103, 9D105, and the definition of “production facilities” suggest how a more precise integration proposal might be formulated. But it is not clear what type of integration might further a human rights promotion purpose.

The need for the proposed “firearms training software” item is questionable. Most firearms training involves technology rather than software. USML Categories I and IX already cover both technology and software training for most firearms. Training technology for 0A018.c muzzle loading firearms is covered by 0E018 use technology. If there is a need to cover training technology for 0A984 and 0A985 shotguns and discharge type arms, 0E982 and 0E984 could be amended to include use training technology for 0A985 and 0A984, respectively.

Altering Descriptions of Items

0A978 “Saps,” in the meaning intended here, does not appear in most dictionaries. A fuller description would help exporters understand what is covered.

0A979 Suggest deletion of “and parts, n.e.s.” There are probably no parts of helmets and shields which are of sufficient concern to warrant separate controls. Neither 0A018.d nor 0A988 helmet controls cover parts. 0A979 should cross-reference USML X(a)(6) as well as 0A018.d and 0A988.

0A982: “Restraint devices” is far too broad. It literally covers, *inter alia*, ordinary seat belts. Suggested alternative wording: delete “Restraint devices, including” or revise along the following lines: “Devices to restrain criminals, including”

0A982, 0A983, 0A984, 0A985, 0A987, 3A980, and 9A980 “parts, n.e.s.” cover numerous general purpose parts of no human rights concern. Most CCL items use the narrower term “specially designed components” instead; but the lack of any interpretation of “specially designed” in the regulations coupled with the 1995 conviction in court based on a “capable of” interpretation of “specially designed” makes this formulation not much better. The 3A981 coverage of “specially designed parts ... n.e.s.” contains three ambiguities: not only the lack of a regulatory interpretation of non-MT use of “specially designed” but also uncertainty as to the distinction between parts and components and uncertainty as to the impact of “not elsewhere specified.” The best solution would be either to specify parts or components of concern or to delete parts altogether. As a fallback, “required” (in quotation marks) components might be used, coupled with a broadening of the part 772 definition of “required” to apply to commodities, or “specially designed” (in quotation marks) components might be used, coupled with a removal of the MT context limitation in the part 772 definition of “specially designed.” In the fallback, n.e.s. would be deleted. If there are components of concern which are covered by another ECCN which is more rigorously controlled, n.e.s. would be replaced by “not controlled by (that ECCN).”

0A982, 0A983, 3A981, and 9A980 “accessories” in all probability cover nothing of human rights concern. The EAR does not define “accessories.” The ITAR definition in 22 CFR 121.8(c) includes “not necessary for their operation but which enhance their usefulness or effectiveness.” The “not necessary” nexus between accessories and equipment of human rights concern indicates a low significance. The “enhance usefulness or effectiveness” might justify retaining accessories for restraint devices and instruments of torture; but adding as defined in the Geneva Conventions to the latter might make this superfluous. In general, if there are any accessories of known concern for human rights purposes, they should be specified. Note that computer accessories were removed from the CCL years ago on a finding that there were no accessories of concern.

0A983: “Specially designed implements of torture” is too imprecise, given the on-going debate in the United States as to the meaning of “torture” and the inability of exporters for the past 13 years to obtain from BIS an interpretation of “specially designed” when used in a non-MT

context. It is suggested that “specially designed” be deleted and “as defined in the Geneva Conventions” be added.

0A984 and 0A985: Suggest “used exclusively” be changed to “clearly intended” and “designed solely” be changed to “clearly intended.” Equipment used exclusively or designed solely for a benign purpose should, nevertheless, be controlled if intended for a malign purpose. 0A984 should cross-reference 0A986 and 0A987 and vice versa. 0A984, 0A985, and 0A987 should refer to USML Category I.

0E982 “exclusively” covers both too much and too little. It covers too much, because some development or production technologies unique to 0A982 or 0A985 are unrelated to the human rights concerns of those items, and too little, because some technologies responsible for achieving characteristics of human rights concern are shared with different products. Suggest changing “exclusively” to “required” (in quotation marks).

0E984: Suggest inserting “required” (in quotation marks) between “technology” and “for.”

1A984: Suggest revision as follows:

~~Chemical agents, including~~ Tear gas formulations containing 1 percent or less of ... other pyrotechnic articles having dual military and commercial use not controlled by 1C018.j.
 Related Controls: ~~N/A~~ (1) See 746.8(b)(1) for additional BIS licensing requirements re Rwanda concerning this entry. (2) See also USML Category XIV(a) for coverage of chemical agents; XIV(d) for coverage of other tear gases, and V(c) for coverage of other pyrotechnics.

1A985, 3A981, and 4A980, if retained, should each refer to the other two

3D980 and 3E980: Suggest changing “specially designed” to “required” (in quotation marks).

4A003, 4A980, 4D001, 4D980, 4E001, 4E980: If CC coverage for these items is not removed for the inverse human rights nexus reason given above, it is suggested that they nevertheless be removed for another reason. Computers are general purpose and software and technology for fingerprint analysis are covered by 3D980 and 3E981. Note that, years ago, numerical control units for machine tools were deleted, because the computers used for that purpose were general purpose. Software of concern continues to be separately controlled in 2D002. If 4D980 is retained, suggest “specially designed” be changed to “required” (in quotation marks). If 4E980 is retained, suggest “required” (in quotation marks) be inserted between “Technology” and “for.”

6E001 and 6E002: If CC coverage is not removed for the inverse human rights nexus reason given above, it is suggested that “required” (in quotation marks) be inserted between “technology” and “for” in the “CC applies” paragraphs.

Destinations

0A984 and 0E984 are divided into two country groups to which licenses are required, not three. CC column 3 should be deleted. CC column 1 descriptions should be revised by adding “or shotguns with a barrel length greater than or equal to 24 inches if for sale or resale to police or law enforcement.” CC column 2 descriptions should be revised to change “regardless of end-user” to “if for sale or resale to other than police or law enforcement”. The existing 0A984 and 0E984 descriptions of CC columns 2 and 3 are irrational, because “police or law enforcement” is a subset of “regardless of end-user.” Compounding this irrationality is the inclusion of Xs for four countries (Fiji, Montenegro, Rwanda, and Serbia) in both CC column 2 and CC column 3. It is logically impossible for an item to require a license to a given destination both regardless of end-user and only if to a specified end-user. Rwanda is probably intentionally in CC column 2. The other three of these four countries (Fiji, Montenegro, and Serbia) are probably only inadvertently included in CC column 2. Note that none of these three are in any Country Group D.

Burma should probably be added to CC column 2, for consistency with its inclusion in D:1.

Kazakhstan, Russia, and Ukraine should reasonably be removed both from CC column 1 and from CC column 2. All three are in Country Group A:4; Russia and Ukraine are also in A:2 and are Wassenaar members. Ukraine is also in A:3.

The following should reasonably also be removed from CC column 1, for the indicated reasons:

Argentina: A:2, A:3, A:4, Wassenaar, 740.11 cooperating

Austria: A:2, A:3, A:4, Wassenaar, 740.11 cooperating, 744 Supp. 3

Brazil: A:2, A:4

China: Qualifies for A:4

Croatia: A:3, Wassenaar

Cyprus: A:3, A:4, 740 Supp. 3

Finland: A:2, A:3, A:4, Wassenaar, 740 Supp. 3, 740.11 cooperating, 744 Supp. 3

Hong Kong: 740.11 cooperating

Ireland: A:2, A:3, A:4, Wassenaar, 740 Supp. 3, 740.11 cooperating, 744 Supp. 3

Korea, South: A:2, A:3, A:4, Wassenaar, 740.11 cooperating

Liechtenstein: 740.16(g) permissive reexport from Switzerland

Malta: A:3, Wassenaar, 740 Supp. 3

San Marino: 744 Supp. 3

Singapore: 740.11 cooperating

South Africa: A:2, A:4, Wassenaar

Sweden: A:2, A:3, A:4, Wassenaar, 740 Supp. 3, 744 Supp. 3

Switzerland: A:2, A:3, A:4, Wassenaar, 740 Supp. 3

Taiwan: 740.11 cooperating

Vatican City: inclusion of Holy See in 744 Supp. 3

Rwanda: All ECCNs controlled for CC purposes should be cross-referenced to 746.8(b)(1)(i),

since, unlike all other destinations, exports by a U.S. person of non-U.S.-origin CC items from a foreign country require a license for export from a foreign country to Rwanda. 746.8(b)(1)(i) inadvertently omits CC items not controlled pursuant to the Country Chart. It should be revised to read:

Crime Control and Detection items identified on the CCL as controlled for CC purposes. 746.8(b)(1)(ii) should be revised to remove 0A978, 0A979, 0A982, 0A984, and 0E982, since these ECCNs are controlled for CC purposes and are therefore covered by 746.8(b)(1)(i). 6E001, and 6E002 in 746.8(b)(1)(ii) should be limited to the portions thereof related to 6A002.a.1, a.2, a.3, and .c and 6A003.b.3 and b.4, since the portions related to 6A002.c police model infrared viewers are covered by 746.8(b)(1)(i).